

**UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION**

JOSE RODRIGUEZ, )  
 )  
 Plaintiff, )  
 )  
 v. ) No.  
 )  
 H & P CAPITAL, INC., )  
 )  
 Defendant. )

**PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL**

JOSE RODRIGUEZ (Plaintiff), through his attorneys, KROHN & MOSS, LTD., alleges the following against H & P CAPITAL, INC., (Defendant):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”
4. Defendant conducts business in the state of Illinois, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1391(b)(1)*.
6. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

## **PARTIES**

7. Plaintiff is a natural person residing in Chicago, Cook County, Illinois.
8. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*.
9. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
10. Defendant is a Florida Corporation with an office in Jacksonville, Florida.
11. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

## **FACTUAL ALLEGATIONS**

12. Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for an alleged debt.
13. Defendant constantly and continuously placed collection calls to Plaintiff from the number (904) 672-1023 seeking and demanding payment for an alleged consumer debt.
14. Defendant constantly and continuously placed collection calls to Plaintiff at the number (773) 930-3674 seeking and demanding payment for an alleged consumer debt.
15. Defendant threatened legal action against Plaintiff while seeking and demanding payment for an alleged consumer debt. To date no lawsuit has been filed.
16. Defendant failed to properly identify itself when seeking and demanding payment for an alleged consumer debt.
17. Defendant contacted Plaintiff and hung up the phone.
18. Defendant represented himself out to be an attorney when in fact; he is not an attorney or a law firm.

19. Defendant failed to provide Plaintiff a debt validation letter.

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

20. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, and abuse Plaintiff.
- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- c. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without disclosing his/her identity.
- d. Defendant violated §1692e of the FDCPA by making false, deceptive, and misleading representations or means in connection with debt collection.
- e. Defendant violated §1692e(3) of the FDCPA by misrepresenting that an individual is an attorney or that a communication is from an attorney.
- f. Defendant violated §1692e(10) of the FDCPA by using false representations and deceptive means in an attempt to collect a debt.
- g. Defendant violated §1692e(11) of the FDCPA by communicating with Plaintiff and failing to properly identify itself.
- h. Defendant violated §1692f of the FDCPA engaging in unfair and unconscionable means to collect or attempt to collect a debt.
- i. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the debt within 5 days after the initial communication including: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that

unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

21. As a direct and proximate result of one or more or all of the statutory violations above Plaintiff has suffered emotional distress (see Exhibit "A").

WHEREFORE, Plaintiff, JOSE RODRIGUEZ, respectfully requests judgment be entered against Defendant, H & P CAPITAL, INC., for the following:

22. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,

Act,

23. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

24. Actual damages,

25. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*

26. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

By: /s/ Adam J. Krohn

[ ]Adam Krohn

Attorneys for Plaintiff

Krohn & Moss, Ltd.

120 W. Madison Street

10<sup>th</sup> Floor

Chicago, IL 60602

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JOSE RODRIGUEZ, demands a jury trial in this case.

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF ILLINOIS

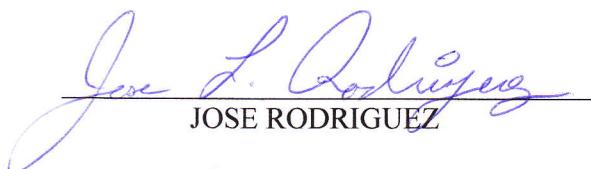
Plaintiff, JOSE RODRIGUEZ, states the following:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, JOSE RODRIGUEZ, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

6-15-09

Date

  
JOSE RODRIGUEZ

**EXHIBIT A**

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

1. Sleeplessness	<input checked="" type="radio"/> YES	<input type="radio"/> NO
2. Fear of answering the telephone	<input checked="" type="radio"/> YES	<input type="radio"/> NO
3. Nervousness	<input checked="" type="radio"/> YES	<input type="radio"/> NO
4. Fear of answering the door	<input checked="" type="radio"/> YES	<input type="radio"/> NO
5. Embarrassment when speaking with family or friends	<input checked="" type="radio"/> YES	<input type="radio"/> NO
6. Depressions (sad, anxious, or "empty" moods)	<input checked="" type="radio"/> YES	<input type="radio"/> NO
7. Chest pains	<input checked="" type="radio"/> YES	<input type="radio"/> NO
8. Feelings of hopelessness, pessimism	<input checked="" type="radio"/> YES	<input type="radio"/> NO
9. Feelings of guilt, worthlessness, helplessness	<input checked="" type="radio"/> YES	<input type="radio"/> NO
10. Appetite and/or weight loss or overeating and weight gain	<input checked="" type="radio"/> YES	<input type="radio"/> NO
11. Thoughts of death, suicide or suicide attempts	<input checked="" type="radio"/> YES	<input type="radio"/> NO
12. Restlessness or irritability	<input checked="" type="radio"/> YES	<input type="radio"/> NO
13. Headache, nausea, chronic pain or fatigue	<input checked="" type="radio"/> YES	<input type="radio"/> NO
14. Negative impact on my job	<input checked="" type="radio"/> YES	<input type="radio"/> NO
15. Negative impact on my relationships	<input checked="" type="radio"/> YES	<input type="radio"/> NO

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 6-10-2009

Jose L. Rodriguez  
Signed Name

Jose L. Rodriguez  
Printed Name